

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

SOUTHERN STAR, INC.,

Plaintiff

vs.

DISPUTE SOLUTIONS, INC.

Defendant

No. CIV-06-30-WH

FILED
MAY - 9 2006
WILLIAM G. GUTHRIE
Clerk, U.S. District Court
By Deputy Clerk

**PLAINTIFF'S COMBINED SECOND AMENDED INITIAL DISCLOSURES
AND RULE 26(a)(2)(A) DISCLOSURES**

Pursuant to Fed. R. Civ. P. 26(a) Plaintiff Southern Star, Inc. ("Southern Star") hereby provides the following disclosures:

I. Amended Initial Disclosures (Rule 26(a)(1))

A. Persons Having Discoverable Information:

1. David Fields, 18647 Horse Pen Lane, Howe, Oklahoma, 74940, (918) 658-2078. David Fields is President of Southern Star. Mr. Fields was present for all or part of DSI's marketing presentation to Southern Star in Poteau, Oklahoma. He has knowledge of facts regarding Defendant's marketing of its dispute resolution services to Southern Star and other facts upon which Southern Star bases its claims against Defendant.

2. Jeremy Fields, 28674 ABM Drive, Poteau, Oklahoma, 74953, (918) 647-0463. Jeremy Fields is Vice President of Southern Star. Mr. Fields was present for all or part of DSI's marketing presentation to Southern Star in Poteau, Oklahoma. He has knowledge regarding the

Defendant's marketing of its dispute resolution services to Southern Star as well as other facts upon which Southern Star bases its claims in this matter.

3. Wendy Davis, 113 Patrick Lane, Poteau, Oklahoma, 74953, (918) 647-3843.

Wendy Davis is the Human Resources Director for Southern Star. She has knowledge of facts relative to Southern Star's effort to implement the dispute resolution services made the subject of this matter as well as other facts upon which Southern Star bases its claims.

4. Kelly C. Dykes, 102 N. Shiloh Rd., Suite 300, Garland, Texas, 75042, (972)

485-5905. Kelly C. Dykes signed the "Contract for Services" made the subject of this matter as President of Defendant.

5. Nissa Dunn, 610 Patterson Ave., San Antonio, Texas, 78209, (210) 804-

2030(h); 4040 Broadway, Suite 525, San Antonio, Texas 78209, (210) 225- 5551 (office). Nissa Dunn (formerly Nissa Sanders) is an attorney practicing in Texas who is board certified in civil appellate law. Ms. Dunn has firsthand knowledge regarding advice provided to Southern Star's counsel regarding whether it would be advisable to seek appellate review of the trial court's denial of Southern Star's motion to compel arbitration in *Juan Soto, et al. v. Enterprise Leasing Company of Houston, Inc., et al.*, 408th Judicial District Court, Bexar County, Texas, Case No. 2004 ("*Soto* Litigation"). Ms. Dunn may be called upon to provide both factual and expert opinion testimony regarding the status of Texas law at the time Southern Star was considering whether to seek appellate review of the trial court's determination and regarding the advice that she provided regarding that issue.

B. Documents Plaintiff May Use to Support Its Claims:

1. "Contract For Services" executed in or about June, 2002.

2. Southern Star, Inc. Dispute Resolution Plan and related documents.
3. Filings in and other documents relating to *Soto* Litigation.

Copies of these documents are in Plaintiff's possession, custody or control. Their specific location is either the offices of Southern Star or its counsel.

C. Computation of Damages

One measure of Plaintiff's damages is the difference in what Defendant represented as the maximum litigation exposure (\$74,000) and the amount actually paid by or for Plaintiff in the *Soto* litigation (in excess of \$1,950,000) which amount exceeds \$1,850,000. Another form of damages to Plaintiff is the amount equal to what Plaintiff paid to Defendant for the defective dispute resolution services plus interest. Without considering interest, that amount is \$34,600, plus costs incurred in litigating Southern Star's claims in this matter.

D. Insurance Agreements

Southern Star is not aware of any applicable insurance agreements.

II. Rule 26(a)(2)(A) Disclosures

Pursuant to Fed. R. Civ. P. 26(a)(2)(A) Plaintiff hereby disclose the following person who may be used at trial to present evidence under Rules 702, 703 or 705 of the Federal Rules of Evidence:

A. Nissa Dunn, 610 Patterson Ave., San Antonio, Texas, 78209, (210) 804-2030(h).; 4040 Broadway, Suite 525, San Antonio, Texas 78209, (210) 225- 5551 (office). Ms. Dunn may testify regarding the status of the applicable law concerning the illusory and therefore unenforceable nature of the arbitration provisions made the subject of the *Soto* Litigation at the time of the denial

of Southern Star's motion to compel arbitration in the *Soto* Litigation and during the period thereafter during which Southern Star considered whether to seek appellate review of such ruling.

Respectfully submitted,

**NEWTON, O'CONNOR, TURNER & KETCHUM
A PROFESSIONAL CORPORATION**

By: 

W. Kirk Turner, OBA #13791

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF MAILING

This is to certify that on this 9th day of May, 2006, a true and correct copy of the above and foregoing **Plaintiff's Combined Second Amended Initial Disclosures and Rule 26(a)(2)(A) Disclosures**, was served via facsimile and first class mail, postage prepaid thereon, to:

Curtis Lewis Marsh, Esq.
900 Jackson Street, Ste. 370
Dallas, Texas 75202

James W. Wilcoxen, Esq.
Wilcoxen & Wilcoxen
P.O. Box 357
Muskogee, Oklahoma 74402-0357



Jon M. Payne